

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

<i>In Re:</i>	CES & Associates, Inc. (Youth About Business))	
	District 13, Map 123, Parcel 352.00)	Rutherford County
	<i>Claim of Exemption</i>)	

INITIAL DECISION AND ORDER

Statement of the Case

This is an appeal from a denial of an application for exemption of the subject property from ad valorem taxation. The application was filed with the State Board of Equalization (the "State Board") on March 1, 2005. By letter dated November 28, 2006 (copy attached for convenience), State Board staff attorney Mark Aaron notified the applicant of the denial on the following grounds:

The subject personal property is used in conjunction with the "All Things Possible" full service thrift shop. The owner of the [personal] property, Creating an Environment of Success, Inc., uses this location in part as a training center for young people to learn entrepreneurial business skills in conjunction with its educational programs. The underlying purposes of the owner appear to have both educational and charitable components. As commendable as the training program is, however, the [personal] property is used for the operation of a thrift shop and does not meet all of the requirements in Tennessee Code Annotated § 67-5-212(n), which governs the exemption of such property.

Creating an Environment for Success (CES) also doing business as Youth About Business ("YAB"), the applicant, timely appealed the staff attorney's initial determination to the State Board on February 22 2007, pursuant to Tenn. Code Ann. § 67-5-212(b)(2). The undersigned administrative judge¹ conducted a hearing of this matter on April 23, 2007 in Nashville, Tennessee. Sam Kirk, President for Creating an Environment of Success, Inc., d/b/a as the "YAB" was present, Attorney Stephen Jasper of Bass, Berry and Sims represented the appellant in both counties. Ms. Pam Oxsher, from the Rutherford County Property Assessors' office was present. Mr. Mark Aaron, Staff Attorney for the State Board of Equalization was also present.

¹During the initial part of the hearing, the Administrative Judge remembered and recognized that she had been a mentor for one of the YAB members during her tenure at Juvenile Court. The Administrative Judge disclosed this information and offered to recuse herself but all parties agreed that the hearing could go forward and that the administrative judge could continue to hear the matters in dispute.

Findings of Fact and Conclusions of Law

The “YAB/CES” has two appeals pending before the State Board; this Order will address the appeal dealing with personal property in Rutherford County.

Mr. Samuel E. Kirk, President and Executive Director, testified he began the business in 1992 in an effort to teach disadvantaged² youth the aspects of business. The pre hearing brief filed on behalf of the appellant states that:

Experience is often the best teacher. Recognizing this, Creating an Environment of Success Inc. (“CES”) makes real-life experience a focal point of the business and financial education provided to high school and middle school students in its Youth About Business training Program.

The Thrift Store in Rutherford County began in July of 2004. As part of the process students were involved in the operating, set up and creation of the Thrift Store. Mr. Kirk further stated that the students do all the work and decision making on a daily basis for that location. The store in Rutherford County has 19 employees who are either students or volunteers. As in the Davidson County model the students attend a monthly business meeting discussing and analyzing the marketability of the inventory and success or failure of the business.

Mr. Aaron from the State Board had stated that he was concerned that there is a portion of the inventory that was purchased by the Taxpayers and that the statute required “all property of the thrift shop must be obtained through donation to the owner of the shop”, he was further concerned that the company had no established policy for giving away “[g]oods to individuals whose financial situations preclude payment”.

Mr. Jasper on behalf of the taxpayer argues that Mr. Aaron is applying more onerous requirements than the statute demands.

Ms. Oxsher from Rutherford County indicated that the County had no position either way.

All parties agree that the statute that is at issue here is an interpretation of T.C.A. § 67-5-212 (n)³.

Article II, section 28 of the Tennessee Constitution permits the legislature to **exempt** from taxation property which is “held and used for purposes purely religious, charitable, scientific, literary, or educational.” Under this authority, the General Assembly has decreed that:

There shall be exempt from property taxation the real and personal property, or any part thereof, owned by any religious, charitable, scientific, or nonprofit educational institution which is occupied and used by such institution or its officers purely and exclusively for carrying out thereupon one (1) or more of the purposes for

²Persons because of their background may not be exposed to the nuances of business.

³Exemptions for Thrift Shops.

which the institution was created or exists... ; provided..., that no property shall be totally exempted, nor shall any portion thereof be pro rata exempted, unless such property or portion thereof is **actually** used purely and exclusively for religious, **charitable**, scientific or **educational** purposes. [Emphasis added.] Tenn. Code Annotated § 67-5-212(a) (1) (A).

In this state, property tax exemptions are **liberally construed in favor** of religious, charitable, and educational institutions. See, e.g., Christian Home for the Aged, Inc. v. Assessment Appeals Commission, 790 S.W.2d 288, 291 (Tenn. Ct. App. 1990). (Emphasis supplied)

Nonetheless, as the party seeking to change the initial determination on its application for exemption, the "YAB/CES" has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(2).

In an analysis of the application, the Designee's ruling, the accompanying explanation in the appeal application and the testimony of the parties at the hearing it appears to the administrative judge that the appellant, "YAB/CES" has met the burden to change the initial determination.

In Tennessee, contrary to most other states, a tax exemption in favor of religious, scientific, literary and educational institutions is liberally construed rather than strictly construed. See, e.g., Mid-State Baptist Hospital, Inc. v. City of Nashville, 211 Tenn. 599, 366 S.W.2d 769, 773 (Tenn. 1963) (citing Sunday School Board of Southern Baptist Convention v. Evans, 192 Tenn. 495, 241 S.W.2d 543 ; City of Athens v. Dodson, 154 Tenn. 469, 290 S.W. 36 ; Cumberland Lodge, No. 8, F. & A. M., v. City of Nashville, 127 Tenn. 248, 154 S.W. 1141) . Under a liberal construction of tax exemptions, the test for determining whether the use requirement of Tenn. Const. art. II, § 28 is satisfied by T.C.A. § 67-5-225 is as stated by our Supreme Court in Methodist Hospitals of Memphis v. Assessment Appeals Comm'n, 669 S.W.2d 305 (Tenn. 1984) , to wit:

In a series of cases decided since City of Nashville v. State Board of Equalization [210 Tenn. 587, 360 S.W.2d 458 (Tenn. 1962)] , this Court has held that the **use requirement** for property to be tax exempt is met where the use is "**directly incidental to or an integral part of**" **one of the recognized purposes of an exempt institution**. Club Systems of Tennessee, Inc. v YMCA of Middle Tennessee. et.al, 2005 Tenn. App. LEXIS 793, December 19, 2005. (subsequent appeal denied) (Emphasis supplied)

Here the personal property/inventory is used to teach the participants in the program one of the recognized purposes of the organization, how to price, maintain, display and manage a store. Mr. Kirk testified, unchallenged, that all the proceeds are turned back into the 'business' to sustain and maintain it.

We must also analyze other precedents that the Courts have explored, for example:

The words "purely and exclusively" in the statute seem to imply **stringent limits** on the grant of tax-exempt status. But the Tennessee Supreme Court has held that "in this State, contrary to most other states, tax exemptions in favor of religious, scientific, literary and educational institutions are liberally construed, rather than strictly." *George Peabody College for Teachers v. State Board of Equalization*, 404 S.W.2d 443 (Tenn. 1966). In a later case, the court held that a parking lot, owned by a hospital and used exclusively by hospital employees, was entitled to the same charitable exemption that the hospital enjoyed. The court declared that the proper test is whether the challenged use is **"directly incidental to or an integral part of one of the recognized purposes of an exempt institution."** *Methodist Hospitals of Memphis v. Assessment Appeals Commission*, 669 S.W.2d 305 (Tenn. 1984).

The law recognizes and encourages the existence of charitable, religious, scientific and educational institutions because their activities confer a benefit on the public, and to some extent relieves the burden on the state to take care of its citizens. See *Book Agents of Methodist Episcopal Church, South v. The State Board of Equalization*, 513 S.W.2d 514 (1974). At the same time, "it is a fundamental rule that all property shall be taxed and bear its just share of the cost of government, and no property shall escape this common burden, unless it has been duly exempted by organic or statute law" *City of Nashville v. State Board of Equalization*, 210 Tenn. 587, 360 S.W.2d 458 (1962). Our decision in this case must balance the purposes of the exemption with the need for an equitable distribution of the tax burden.

The distinctions cited by the Designee appear to have been explained sufficiently to the satisfaction of the administrative judge that under TCA § 67-5-212, in pertinent part:

- (n) There shall be exempt from property taxation the real and personal property, or any part thereof, that is owned by a religious or charitable institution and that, is occupied and used by such institution for a thrift shop; provided, that:
 - (1) The institution is exempt from payment of federal income taxes under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3));
 - (2) (A) The thrift shop is operated as a training venue for persons in need of occupational rehabilitation; or
(B) The thrift shop is operated primarily by volunteers;
 - (3) the inventory of the thrift shop is obtained by donation to the institution that owns and operates the shop;⁴
 - (4) Goods are priced at levels generally ascribed to used property;
 - (5) Goods are given to persons whose financial situations preclude payment; and
 - (6) The net proceeds of the thrift shop are used solely for the charitable purposes of the institution that owns and operates the shop.

The administrative judge finds that the more stringent approach is not the intent of the statutes of this state as exemplified by the ever changing statutes and inclusion of specific

⁴Testimony by Mr. Kirk shows that 95% to 98% of the items for the Thrift Shop are donated with only occasional purchases to enhance the items in the store. The administrative judge does not believe that the intent of statute was 100% when read with the cases regarding liberal interpretations of the exemption statutes.

activities of taxpayers in organizations that operate to “confer a benefit on the public, and to some extent relieves the burden on the state to take care of its citizens.” Book Agents of Methodist Episcopal Church, South v. The State Board of Equalization, 513 S.W.2d 514 (1974).

While some of this is new information it is still germane to issues under appeal. As Administrative Judge Pete Loesch noted in New Fellowship Ministries, (Hawkins County, Initial Decision and Order, October 13, 2006):

NFM undoubtedly qualifies as a religious institution under T. C. A. § 67-5-212. *Yet, based on the factual situation at the time, the staff attorney's ruling on the application was clearly correct.* Arguably an applicant for exemption should not be allowed to submit new or additional information in an appeal from an initial determination. For better or worse, however, the Assessment Appeals Commission appointed by the State Board pursuant to T. C. A. § 67-5-1502 has followed the more lenient policy that “until an application is finally determined, the Board. . . should consider all pertinent evidence relative to the application at hand.” (emphasis supplied) Beth Sholom East Memphis Synagogue, Inc. (Shelby County, final Decision and Order, May 16, 2001). p3

See also Christian Chapel Church, (Bedford County) *Initial Decision and Order*, August 8, 2003, when ALJ Pete Loesch also stated:

. . . an “appeal” of an initial determination is not confined to the question of whether the State Board designee acted properly on the basis of the information available. Rather, the appellant is permitted to submit new evidence in support of the claim of exemption . . . Indeed, the appellant may even “update” the application to include recent developments

Order

It is, therefore, **ORDERED** that the initial determination be changed to reflect that only the personal property that is located at 352 West Northfield Blvd., Suite #3 belonging to Creating an Environment of Success, Inc. (Youth About Business), is exempt from taxation with an effective date of January 1, 2005.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

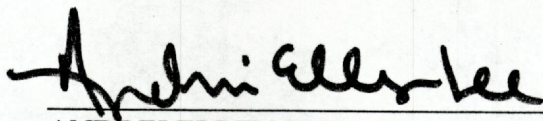
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal “**must be filed within thirty (30) days from the date the initial decision is sent.**” Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that

appeal “**identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order**”; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this ~~19th~~ day of July, 2007.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Sam E. Kirk, Director Youth About Business
Stephen Jasper, Attorney Bass, Berry & Sims
John Barbee, Rutherford County Assessors Office

CESRUTHERFORD



STATE OF TENNESSEE
STATE BOARD OF EQUALIZATION

SUITE 1700
JAMES K. POLK OFFICE BUILDING
505 DEADERICK STREET
NASHVILLE, TENNESSEE 37243-0280
PHONE (615) 401-7883
FAX (615) 253-4847

NOVEMBER 28, 2006

MS. KALISHA HENDERSON
CREATING AN ENVIRONMENT OF SUCCESS, INC.
P.O. BOX 110120
NASHVILLE, TN 37222

Re: Initial Determination - Exemption Application(s) – Property identified as 13 123 123 35200
P owned by CREATING AN ENVIRONMENT OF SUCCESS, INC. in RUTHERFORD
County

Dear MS. HENDERSON:

This is to inform you that your application for property tax exemption is denied due to non-qualification.

The subject personal property is used in conjunction with the "All Things Possible" full-service thrift shop. The owner of the property, Creating an Environment of Success, Inc., uses this location in part as a training center for young people to learn entrepreneurial business skills in conjunction with its educational programs. The underlying purposes of the owner appear to have both educational and charitable components. As commendable as the training program is, however, the property is used for the operation of a thrift shop and does not meet all of the requirements in Tennessee Code Annotated § 67-5-212(n), which governs the exemption of such property.

Generally, property used in connection with commercial operations where goods or services are provided to unrelated organizations or individuals is not exemptible. Book Agents of the Methodist Episcopal Church v. State Board of Equalization, 513 S.W.2d 514 (Tenn. 1974); Memphis Development Foundation, 653 S.W.2d 266 (Tenn. Ct. App. 1983); Tennessee Code Annotated § 67-5-212(a)(3) ("The real property of any such institution not so used exclusively for carrying out thereupon one (1) or more of such [religious, charitable, scientific or nonprofit educational] purposes, but leased or otherwise used for other purposes, whether the income received therefrom be used for one (1) or more of such purposes or not, shall not be exempt...")

In 2004, the legislature created a special exception to the rule of non-exemption for retail operations. Tennessee Code Annotated § 67-5-212(n) provides for the exemption of thrift shops that meet certain requirements. While many of the requirements appear to be met, Tennessee Code Annotated § 67-5-212(n)(5) does not. That subsection allows for exemption only where "[g]oods are given to persons whose financial situations preclude payment..."

Your 4/24/06 letter indicated the following:

Yes, if we recognize a need, the goods that are sold in our training center are donated to [individuals whose financial situations preclude payment]. Currently a vehicle is being donated to our training center. We will be blessing a hard-working couple that works in the training center with that vehicle. They are in great need of transportation. There are also educational books that have been donated to us that we have in turn donated to customers with children.

A letter from Sam Kirk, the organization's Executive Director, was received on 3/30/06 regarding a related property in Davidson County and indicated the following:

Part of our model is to find victims of fires and other tragic events and help those persons. During the Katrina Hurricane Relief, our storage center at 3510 West Hamilton [at a different location from the subject personal property] was used simply to give clothes and furniture to families striving to get on their feet.

While highly commendable, these altruistic activities do not appear to meet the requirement because the statute contemplates a systematic policy of giving any item for sale at the store to any financially needy person during the course of regular business. The instances described in the correspondence are situational and suggest that the majority of items carried by the shop are not normally donated to persons whose financial situations preclude payment during the shop's course of regular business. Moreover, a truck is not a thrift shop inventory item.

The 3/30/06 letter from the organization also presented a problem with Tennessee Code Annotated § 67-5-212(n)(3), which requires that the inventory of the thrift shop be "obtained by donation to the institution that owns and operates the shop..." The 3/30/06 indicated that "5% of the inventory is obtained through purchase of merchandise." While this is admittedly a relatively small percentage of the inventory, the statute appears to require that **all** inventory be obtained by donation. Compare Tennessee Code Annotated § 67-5-212(n)(2) (requiring that the thrift shop be "operated as a training venue for persons in need of occupational rehabilitation; or... operated **primarily** by volunteers..." (emphasis added). The absence of any similar qualifying language in Tennessee Code Annotated § 67-5-212(n)(3) leads to the reasonable conclusion that **all** property of the thrift shop must be obtained through donation to the owner of the shop, which is not the case here.

The applicant or the county assessor may appeal this determination by filing an appeal form with the appropriate fee *within 90 days from the date of this letter*, using a form and fee schedule we will provide you upon request.

Sincerely,

Mark Aaron

Mark Aaron
Staff Attorney

cc: John Barbee, Rutherford County Assessor of Property
Teb Batey, Rutherford County Trustee
Michael D. Sontag, Bass, Berry & Sims, PLC
Samuel E. Kirk, CES, Inc.

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